

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Competitive Product Prices
International Priority Airmail, Commercial ePacket,
Priority Mail Express International, Priority Mail
International & First-Class Package International
Service with Reseller Contracts
International Priority Airmail, Commercial ePacket,
Priority Mail Express International, Priority Mail
International & First-Class Package International
Service with Reseller Contract 6

Docket No. MC2023-76

Competitive Product Prices
International Priority Airmail, Commercial ePacket,
Priority Mail Express International, Priority Mail
International & First-Class Package International
Service with Reseller Contract 6 (MC2023-76)
Negotiated Service Agreements

Docket No. CP2023-77

Competitive Product Prices
International Priority Airmail, Commercial ePacket,
Priority Mail Express International, Priority Mail
International & First-Class Package International
Service with Reseller Contracts
International Priority Airmail, Commercial ePacket,
Priority Mail Express International, Priority Mail
International & First-Class Package International
Service with Reseller Contract 7

Docket No. MC2023-78

Competitive Product Prices
International Priority Airmail, Commercial ePacket,
Priority Mail Express International, Priority Mail
International & First-Class Package International
Service with Reseller Contract 7 (MC2023-78)
Negotiated Service Agreements

Docket No. CP2023-79

ORDER ADDING INTERNATIONAL PRIORITY AIRMAIL, COMMERCIAL EPACKET,
PRIORITY MAIL EXPRESS INTERNATIONAL, PRIORITY MAIL INTERNATIONAL,
AND FIRST-CLASS PACKAGE INTERNATIONAL SERVICE WITH RESELLER
CONTRACTS TO THE COMPETITIVE PRODUCT LIST

(Issued December 22, 2022)

I. INTRODUCTION

In these dockets, the Postal Service seeks to add two new International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller contracts (Agreements) to the competitive product list. For the reasons discussed below, the Commission approves the requests.

II. BACKGROUND

On December 9 and December 12, 2022, in accordance with 39 U.S.C. § 3642, 39 C.F.R. §§ 3040.130 *et seq.*, and 39 C.F.R. § 3035.105, the Postal Service requested the inclusion of additional products, along with supporting documents (Requests). In the Requests, the Postal Service asserts that the Agreements are competitive products that establish rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Requests at 1. Among the supporting documents in each filing, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement of supporting justification, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service

submitted applications for non-public treatment of materials requesting that unredacted portions of the Governors' Decision and the contracts, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.

On December 12 and December 13, 2022, the Commission issued notices establishing the instant dockets, appointing Public Representatives, and providing interested persons with an opportunity to comment.¹

III. COMMISSION ANALYSIS

The Commission has reviewed the Requests, the contracts, the supporting data filed under seal, and the Public Representatives' comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Requests include assigning the Agreements to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3040.134. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3040.132(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contracts in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to

¹ Docket No. MC2023-75 *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 12, 2022; Docket No. CP2020-177, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 13, 2022.

competitors. Requests, Attachment D at 2. The Postal Service states that the contract partners support the Requests, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partners. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the prices of the proposed products substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partners and the Public Representatives support the addition of the Agreements to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that the Agreements are appropriately classified as competitive and are added to the competitive product list.

Cost considerations. Because the Commission finds the Agreements to be competitive products, the Postal Service must also show that each contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by each contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the term of the contracts should cover their attributable costs. 39 U.S.C. § 3633(a)(2). Thus, the Commission also finds that the contracts should not result in competitive products as a whole being subsidized by market dominant products, in accordance with

39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contracts are unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3035.107(c). Accordingly, a preliminary review of the contracts indicates they are consistent with section 3633(a).

The Commission will review the contracts' cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Financial workpapers. In the financial workpapers filed in support of the Modifications, the Postal Service relied on settlement charges published in International Bureau (IB) Circulars 152 and 161, published on September 19, 2022, and September 26, 2022, respectively. The most current settlement charges were published in IB Circulars 184 and 186, published November 21, 2022. The Commission evaluated the cost coverage of these contracts based on the most current settlement charges. The Commission encourages the Postal Service to use the most recent settlement charges in the supporting workpapers filed with international negotiated service agreements.

Other considerations. The intended effective date of the Agreements is January 22, 2023. Requests at 2. The Agreements are set to expire May 31, 2024. *Id.* Attachment B at 10.

The Agreements contain a provision whereby the Postal Service can extend each contract for two 3-month periods provided the Commission is notified at least 7 days prior to the contract's expiration date. *Id.* The Commission finds the two potential 3-month extension periods are reasonable because the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

The Postal Service shall promptly notify the Commission should there be a change in the effective date of any of the Agreements. If any of the Agreements are terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in the appropriate dockets.

Section IV contains a list of the docket numbers associated with each Postal Service request, the title and date of the Postal Service's filing, the term of the agreement, and a brief summary of the comments received.

The Commission approves the Agreements filed in the docket numbers listed in section IV as new products. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

IV. NEW PRODUCTS APPROVED

1. *Docket Nos.:* MC2023-76 and CP2023-77; *Filing:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 6 to Competitive Product List and Notice of Filing Materials Under Seal, December 9, 2022 (MC2023-76 and CP2023-77 Request). *Term:* The intended effective date of the Agreement in the above-referenced docket is January 22, 2023. MC2023-76 and CP2023-77 Request at 2. The Agreement is set to expire May 31, 2024. *See id.* Attachment B at 10. *Public Comments:* The Public Representative filed comments on December 19, 2022.² No other comments were received. The Public Representative concludes that the contract should be classified as a competitive product and that it should generate sufficient revenue to cover its costs. MC2023-76 and CP2023-77 PR Comments at 3.

2. *Docket Nos.:* MC2023-78 and CP2023-79; *Filing:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 7 to Competitive Product List and Notice of Filing Materials Under Seal,

² Docket Nos. MC2023-76 and CP2023-77, Public Representative Comments on Postal Service Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International [, Priority Mail International] & First-Class Package International with Reseller Contract 6 to Competitive Product List, December 19, 2022 (MC2023-76 and CP2023-77 PR Comments).

December 12, 2022 (MC2023-78 and CP2023-79 Request). *Term:* The intended effective date of the Agreement in the above-referenced docket is January 22, 2023. MC2023-78 and CP2023-79 Request at 2. The Agreement is set to expire May 31, 2024. *See id.* Attachment B at 10. *Public Comments:* The Public Representative filed comments on December 19, 2022.³ No other comments were received. The Public Representative concludes that the contract should be classified as a competitive product and that it should generate sufficient revenue to cover its costs. MC2023-78 and CP2023-79 PR Comments at 2.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreements filed in the dockets listed in section IV are added to the competitive product list as new products under Negotiated Service Agreements, International. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of any of the Agreements.
3. The Postal Service shall promptly file notice of an Agreement's termination with the Commission in the appropriate docket if that Agreement is terminated prior to the scheduled expiration date.

³ Docket Nos. MC2023-78 and CP2023-79, Public Representative Comments on Postal Service Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 7 to Competitive Product List, December 19, 2022 (MC2023-78 and CP2023-79 PR Comments).

4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Erica A. Barker
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3040, subpart A—Competitive Product List. These changes reflect the Commission's order in Docket Nos. MC2023-76 and CP2023-77 and MC2023-78 and CP2023-79. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to Subpart A of Part 3040—Competitive Product List

Negotiated Service Agreements*

International*

International Priority Airmail, Commercial ePacket, Priority Mail Express International,
Priority Mail International & First-Class Package International Service with Reseller
Contract 6

International Priority Airmail, Commercial ePacket, Priority Mail Express International,
Priority Mail International & First-Class Package International Service with Reseller
Contract 7

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

International*

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 6

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 7

2500 Negotiated Service Agreements

2510 Outbound International

2510.19 International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contracts

- International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 6

Baseline Reference

Docket Nos. MC2023-76 and CP2023-77
PRC Order No.6388, December 22, 2022

Included Agreements

CP2023-77, expires May 31, 2024

- International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 7

Baseline Reference

Docket Nos. MC2023-78 and CP2023-79

PRC Order No. 6388, December 22, 2022

Included Agreements

CP2023-79, expires May 31, 2024